Terrell, Ag. C.J. The plaintiff in this action is one of the beneficiaries in the estate of T. M. Kathiraysan Thevar deceased, and is the assignee under s. 30 of the Probate and Administration Ordinance of a bond entered into by Kathirvaloo Thevar and the two defendants for the due administration of the estate of the deceased by Kathirvaloo Thevar the administrator.

The plaintiff commenced proceedings against the administrator in November, 1938, (Suit No. 490 of 1938) and on the 10th February, 1939, an order was made that certain accounts and enquiries be taken and made. As a result thereof the Supreme Court on the 24th January, 1940, certified that a sum of $6,031-20 had been unaccounted for by the administrator. In the month of March, 1940, the administrator died.

The plaintiff claims the sum of $7,500, the gross amount of the bond, but it is admitted that he can only recover the actual loss which the estate has suffered.

The only question that arises is whether the accounts which were taken in Suit No. 490 of 1938 are binding on the defendants.

The condition of the bond is that the obligation is void if the administrator "do well and truly administer according to law the movable and immovable property of the deceased etc." There is no provision that any admission by, or judgment against, the principal shall be conclusive against the surety, and accordingly the ordinary rules governing principal and surety apply. The judgment in Suit No. 490 of 1938 must therefore be regarded as *res inter alios acta* (see *Hailsham* Vol. XVI p. 58). As Lush L.J. said in *Ex parte Young, In re Kitchin,*[1] you must find explicit words to make a person liable to pay any amount which may be awarded against a third person, whether it be by a jury, or a Judge, or an arbitrator. What the guarantor engages for is to be answerable for any debt that they may owe for wines, or for any damages which may be sustained by the breach of any other of the provisions of the agreement. Then the amount of the debt in the one case, and the amount of the damages in the other, must, if the surety insists upon it, be proved against him, just as it would have to be proved if the action were against the principal".

The Precedent books contain forms of guarantee in which the surety expressly agrees to accept a statement of account or certificate to which the surety himself is not a party, (*see* for instance the policy of guarantee given by an Insurance Company guaranteeing the fidelity of an officer of Guardians of the Poor in Butterworth's Encyclopaedia of Forms and Precedents, Vol. 6 at p. 229). Guarantees to bankers usually contain similar provisions. But when there is no special provision the surety cannot be held to have waived his rights.

There will accordingly be an order that the accounts of the administrator be taken again before the Registrar. I see no reason why the accounts should not be taken by the same Registrar. The further consideration of the action will be adjourned.

Order for retaking of accounts.

Solicitor for plaintiff—*R. W. D. Edwardes-Ker.*
Solicitors for defendants—*Philip Hoalim & Co.*

[APPELLATE CRIMINAL JURISDICTION]
TERRELL, Ag. C.J.
October 3, 1940.

LEONG AH KOW v. REX.

[SINGAPORE MAGISTRATE'S APPEAL No. 85 of 1940]

Common gaming house—Game of darts—Whether game of chance or skill—Money or money's worth—What amounts to money's worth—Common Gaming Houses Ordinance (Cap. 30) s. 4(c).

A game of darts has been played in Singapore amusement parks. The dart board is circular and is divided into divisions separately coloured or separately numbered. The player stakes a counter upon the colour or number which he intends to hit. The dart board is spun on its axis and the player throws the dart while the board is in motion. If the dart pierces the colour or number on which the player stakes he receives a tin of cigarettes; if not, of course, he loses his stake.

Held, that in the circumstances of this case the game is a game of chance and that if the owner of the dart board stakes his tin of cigarettes against the price of the counter of the player the game is played for money or money's worth.

Cases referred to:—

(1) *Dyson v. Mason,* 22 Q.B.Div. 351.

(2) *The King v. Chapman,* [1931] 2 K.B. 606.

(3) *Luff v. Leaper,* 36 J.P. 773.

MAGISTRATE'S APPEAL.

T. W. Ong for appellant.

C. H. Butterfield (Crown Counsel) for the Crown.

The appellant was charged before the Magistrate on a charge under s. 4(c) of the Common Gaming Houses Ordinance (Cap. 30) and he was acquitted by the Magistrate. The Crown appealed against the acquittal and the appellant was ordered to be

retried; he was subsequently convicted by the Magistrate and fined 50 cents. The appellant now appealed against the conviction.

T. W. Ong for appellant. The Common Gaming Houses Ordinance does not define the word "gaming". The word "gaming" or gambling" is defined in *Wharton's* Law Lexicon 14th edn. on page 445 as "the playing of any game of chance, as cards, dice etc., for money or money's worth." "Gaming" was defined by Wills J. in *Dyson v. Mason*[1] "it seems to me to have been held and rightly held that playing any game for money is gaming". Therefore, the playing of any game not for money but for a prize as a tin of cigarettes or other goods of this type unless the giving of such goods is merely colourable, does not amount to playing the game for money or money's worth. In *The King v. Chapman*[2] Lord Hewart C.J. referred to *Maxwell* on the Interpretation of Statutes, 7th edn. p. 244 in which it is quoted "Where an equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning which the canons of interpretation fail to solve, the benefit of the doubt should be given to the subject and against the legislature which has failed to explain itself".

Butterfield in reply.

Terrell, Ag. C.J.—Only two questions arise on this appeal; (1) whether the game was a game of chance, and (2) whether it was played for money or money's worth.

As regards (1), according to the evidence the board was spun so fast that it was impossible to distinguish the numbers. Such being the case, hitting any particular number must have been pure chance.

As regards (2), in *Luff v. Leaper*,[3] Blackburn J. considered a bottle of beer was money's worth and this decision was cited with approval by Huddlestone B. in *Dyson v. Mason*,[1]. In my opinion a tin of cigarettes is also money's worth. Accordingly, the player staked the price of his ticket and the owner of the dart board a tin of cigarettes, the result depending on pure chance. The elements of gaming within the meaning of the Ordinance were accordingly present, and the conviction was correct and the appeal must be dismissed.

Appeal dismissed.

Solicitors for appellant—*Braddell Brothers.*

[ORIGINAL CIVIL JURISDICTION]

TERRELL Ag. C.J.

November 6, 1940.

IN RE THE ESTATE OF SAFIAH BINTE TAHAR ALSO KNOWN AS SAFIAH BINTE TAGA DECEASED.

[SINGAPORE ORIGINATING SUMMONS No. 138 of 1940]

Powers of executor or administrator—Power to sell for purpose of distribution—Application to Court more than six years after death of de cujus—Procedure.

When a testator or intestate dies and the executor or administrator has paid all the debts and the administration expenses it is not always certain whether the administration is at an end and he becomes the trustee of the deceased's property **in specie** for the beneficiaries or the next of kin, as the case may be; or whether the executor's or administrator's power of disposal continues for the purpose of distribution also. In the past in the Colony the latter view has been adopted and grants **de bonis non** have frequently been made many years after all the debts and administration expenses have been paid merely for the purpose of facilitating distribution. This practice has been approved by the Supreme Court though it is not the only procedure that can be adopted.

When more than six years have elapsed since the death of an intestate no sale can be effected by the administrator without the sanction of the Court. Such sanction is not granted as a matter of course or upon an **ex parte** application and one or more of the beneficiaries should always be made respondent or respondents to the Summons. The Court may require to be satisfied as to the reasons for delay and will in every case where infants are interested require an affidavit of value so as to ensure that the property is not sold at an undervalue.

If, however, the Court is satisfied on these points the sanction will be given. The resulting sale will not be a sale by the Court, but a sale by the administrator with the sanction of the Court. Order 48 r. 2 (sale altogether out of Court) has no application in such a case, and accordingly the order authorising the administrator to exercise his powers does not require the declaration referred to in O. 48 r. 3.

Cases referred to:—

(1) *Norwood & Blalis Contract, In re*, (1917) 1 Jr. r. 472.

(2) *Ponder, In re* (1921) 2 Ch. 59.

ADJOURNED ORIGINATING SUMMONS.

P. Y. Tan for administrator.

M. J. Namazie for three next of kin.

The facts and arguments sufficiently appear from the judgment.

Cur. adv. vult.

Terrell Ag.C.J. The deceased, who died on the 21st May, 1933, intestate, was the wife of the applicant to whom letters of administration were granted on the